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JIM FRENCH STUDIOS, INC.

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

12 PROWEST MEDIA CORPORATION,)
13)
14)
15 Debtor.) **DECLARATION OF JOHN
H. MacCONAGHY IN SUPPORT OF
CONDITIONAL OPPOSITION
OF JIM FRENCH
STUDIOS, INC. TO DEBTOR'S
MOTION FOR AUTHORITY TO
PAY POST PETITION RETAINER**

Hearing Date: 11/12/2010
Time: 10:00 a.m.
Santa Rosa Courtroom

19 I, John H. MacConaghy, state:

20 1. I am an attorney admitted to the bar of this Court and am counsel or record for the
21 Secured Creditor Jim French Studios, Inc. in this matter.

22 2. Attached to this Declaration and labeled Exhibit 1 is a correct copy of the
23 collateral description of my client's security interest in the assets of the Debtor.

24 3. Following the Court's "Order Modifying Automatic Stay" and "Order Denying
25 Motion for Use of Cash Collateral" the Debtor refused to surrender any of my client's collateral

4. Attached to this Declaration and labeled Exhibit 2 is a correct copy of the

1 Transcript of the October 22, 2010, hearing on my client's Motion to Convert Case to Chapter 7.

2 5. Prior to the October 22, 2010 hearing, and on or about August 27, 2010, I caused
3 to be served on the Debtor an Order for Examination Pursuant to Rule 2004. Among other
4 things, this Order requested production of "All check registers, disbursement journals, payment
5 ledgers, bank statements, cancelled checks, and documents concerning ACH transfers by the
6 Debtor for the period from May 1, 2010 through August 31, 2010;"

7 6. The Debtor initially refused to produce any of these documents and instead filed a
8 Motion for a Protective Order. After the Debtor filed a Motion for Protective Order, Mr.
9 Chandler ultimately agreed with me that the Debtor would produce these documents for
10 inspection at its place of business in Sonoma, CA on Wednesday, October 20, prior to the
11 October 22 hearing. I appeared with a representative of the Debtor at that time, but the
12 documents were not produced. The Debtor's co-principal Mr. Rutherford angrily informed us
13 that Mr. Chandler had advised him that the inspection was to be a "walk through" only.

14 7. At the October 22 hearing, as is set forth on Exhibit 2, Mr. Chandler advised the
15 Court that there was a "mix up" as to the documents and that they would be promptly produced.
16 I agreed that they could be produced by Monday, October 25, based on the understanding that I
17 would receive a comprehensive production.

18 8. The Debtor's co-principal Mr. Settle hand delivered a number of documents to
19 my office on October 25. There were no cancelled checks included in the production. There
20 was no evidence of sequestration of cash collateral included in the document production.

21 9. The Debtor did produce a payment ledger from its DIP Account covering the
22 period from June 14, 2010 through August 31, 2010. (The Debtor did not produce any requested
23 ledgers or disbursement journals showing the initial post petition period of June 3 through June
24 14.) The payment ledger produced by the Debtor shows expenditures of \$42,853.00 for the
25 period between June 14 and August 31 that likely represent misappropriation of my client's cash
26 collateral. I have prepared a spreadsheet of these expenditures which is attached to this

1 declaration and labeled Exhibit 3.

2 10. The payee “Bouledoge, LLC”, which received about one half of these
3 disbursements, is an LLC wholly owned by Messers Settle and Rutherford and scheduled on
4 their own personal bankruptcy filings as having a value of “50.00”. The payee Sandra Powell,
5 who received \$5,450.00 on August 6 is particularly troubling. According to the Schedule Gs
6 filed in Messrs. Rutherford and Settle’s personal bankruptcy cases [Case Nos. 10-12044 and 10-
7 12044] Ms. Powell is the landlord of Messrs Rutherford’s and Settle’s personal residence, for
8 which they pay rent of \$5450 per month. Since the filing of this case, my client has strenuously
9 objected to the use of its cash collateral to pay this rental obligation.

10 11. As is reflected by the Court’s minute orders shown on the Docket for June 18,
11 2010 and July 8, 2010, the Court ruled “Only expenses to be paid must be absolutely necessary
12 pending final hearing. **No payments for rent, printing or to insiders...**” Yet the Debtor went
13 ahead and paid the personal rent of Messrs. Settle and Rutherford on August 6, 2010, as well as
14 the numerous payments to the “insider” Bouledoge, LLC.”

15 12. Based on the foregoing, my client does not consent to the further use of its cash
16 collateral to pay a post-petition retainer.

17 I declare under penalty of perjury of the laws of the United States that the foregoing is
18 true and correct and that this declaration is executed on November 8, 2010 at Sonoma,
19 California.

20 _____
21 /s/ John H. MacConaghy
22 John H. MacConaghy
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